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HIGH COURT OF JUDICATURE, CHHATTISGARH AT BILASPUR

Writ Petition No. 1950 of 2003

PETITIONER: H.G.Chourasia, son of M.L.Chourasia, aged about 52 years, presently posted as Jr. Superintendent (Class-III post), Office of the Branch Manager, C.G. State Ware Housing Corporation, Branch at Kharsiya, District-Raigarh, R/o Kharsia, District-Raigarh (C.G.).

-Versus-

RESPONDENTS:

1. Chhattisgarh State Ware Housing Corporation, through its Chairman, C.G. State Ware Housing Corporation, D.K.S. Building, Mantralaya, Raipur, District- Raipur (C.G.).

2. Managing Director, C.G. State Ware Housing Corporation, Head Office at Raipur, District- Raipur (C.G.).

3. V. K. Kateliya, Jr. Technical Assistant, Office of Branch Manager, C.G. State Ware Housing Corporation, Katghora, District- Korba (C.G.).

4. S. C. Pandey, Jr. Superintendent, Office of Branch Manager, C.G. State Ware Housing Corporation, Bilaspur, District- Bilaspur (C.G.).

POST FOR ORDER ON 19th SEPTEMBER, 2003

Sd/-
L.C.BHADOO
Judge

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4. S. C. Pandey, Jr. Superintendent, Office of Branch Manager, C.G. State Ware Housing Corporation, Bilaspur, District- Bilaspur (C.G.).

Shri Y. C. Sharma, counsel for the petitioner.

Shri Prashant Mishra, counsel for the respondents No. 1 and 2.

Shri M. K. Beg, counsel for the respondent No. 3.

Shri Bhaskar Pyasi, counsel for respondent No.4.

Before: Hon'ble Shri L.C. Bhadoo, J.

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ORDER

(Passed on 19th September, 2003)

1. The petitioner has preferred this writ petition under Article 226/227 of the Constitution of India challenging the order dated 28.6.2003 by which the petitioner has been transferred from Kharasia Branch to Katghora Branch. This order is to the following effect:-

   (i) Respondent No.3 V. K. Katelia has been transferred from Katghora Branch to Bilaspur Branch on his own request and expenses.

   (ii) Respondent No.4 S. C. Pandey has been transferred from Bilaspur Branch to Kharasia Branch. &

   (iii) Petitioner H. G. Chourasia has been transferred from Kharasia Branch to Katghora Branch.

2. The facts leading to filing of this writ petition are that the petitioner is presently posted as Jr. Superintendent in the office of the Branch Manager of State Ware Housing Corporation at Kharasia, his post is Class-III. He joined the Corporation as a Junior Technical Assistant in the year 1979 and after reorganization of the State of M.P. he was finally allocated to the State of Chhattisgarh and in the month of August 2002 he was directed to join in the office of the Branch Manager, Rajnandgaon. Thereafter the petitioner was attached with the Head Quarter, Raipur in the month of April 2003. In the month of May, 2003 i.e. within a month the petitioner was transferred from Raipur to Kharasia on

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7.5.2003 where the petitioner joined in the office of Branch Manager at Kharasia. Now again the petitioner has been transferred vide order dt. 28.6.2003 from Kharasia to Katghora (District-Korba). According to the petitioner this transfer order has been issued just to accommodate the Respondent No.3 who has been transferred at his own request, therefore the impugned transfer order is malafide and not sustainable, it suffers from illegality and comes within the ambit of frequent transfer.

3. Return has been filed on behalf of the Respondent No.1 in which it has been mentioned that the transfer order of the petitioner has been issued in administrative interest, all the transfer orders of the petitioner were issued in administrative interest, transfer is an incident of service and an employee should always ready to serve wherever he is asked to join. The transfer has not been effected just to accommodate the Respondent No.3. The transfer is not malafide or arbitrary, therefore the writ petition be dismissed.

4. The Respondent No.3 has also filed his return in which it is stated that all the allegations made in the writ petition are denied. The petitioner while working at Rajnandgaon committed certain irregularities that is why he was attached to Raipur, therefore that was not a transfer therefore the petition be dismissed.

5. Return has also been filed by the Respondent No.4 in which it is stated that he was settled at Bilaspur and within a period of one year he has been transferred to Kharasia.

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6. I have heard learned counsel for the parties.

7. It is true that it is always presumed that the transfers of the officers/employees are made in administrative exigencies unless it is made contrary to the Rules or with malafide. The transfer is an incident of service. In the case in hand, the petitioner has very specifically raised the point that he has been transferred just to accommodate the Respondent No.3 and that is why the transfer is malafide. The action of the employer can be established to be malafide by showing through record but sometimes it can be inferred from the relevant record which prima facie on the face of record shows that the action of the employer is not justified and is not reasonable.

8. The power of judicial review of the administrative action of the authority can be exercised only when it is found that the action of the employer is unjust, not proper, arbitrary and malafide. In this case if we look at the order Annexure P/1 it shows that the Respondent No.3 has been transferred on his own expenses from Katghora to Bilaspur which shows that the transfer has been made on the request of Shri V. K. Katelia.

9. Now coming to the question as to whether transfer of the petitioner comes within the ambit of frequent transfers. The petitioner was transferred from Raipur to Kharasia in the month of May 2003 and within a period of one and a half month he has been again transferred from Kharasia to Katghora and this is in consequence of the transfer of the

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Respondent No.3. Therefore, by any stretch of imagination this action of the respondent cannot be held to be bonafide or in the administrative exigency. This Court is always reluctant to interfere with the transfer orders and it is expected that the employer always transfers his employee in the interest of the administration or in the public interest. But the facts of this case itself shows that the petitioner has been transferred frequently and that too when he is an employee of the lower level and it prima facie shows that the transfer has been effected just to adjust the Respondent No.3 and not for the administrative reason. It has not been mentioned anywhere that the work of the petitioner at Kharasia was not up to the mark or there was any complaint against him regarding the work or conduct.

10. In view of the above, I am of the opinion that it is an exceptional case in which the power to judicial review should be exercised by the Court in order to rectify the unreasonable and arbitrary action of the Respondents No. 1 and 2.

11. In the result the writ petition of the petitioner is allowed and the impugned order qua the petitioner is set-aside. Respondents No. 1 and 2 shall suitably adjust the Respondents No. 3 and 4.

Sd/-
L.C.BHADOO
Judge

Thakur